

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

WP(C).No. 34525 of 2006(I)

PETITIONER:

P.SOMARAJAN, PROPRIETOR, M/S.KAILAS
CASHEW EXPORTS, PEETHUKONAM, CHEERANKAVU,
EZHUKONE, KOLLAM-691 505.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF
ELECTRICITY, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM,
THIRUVANANTHAPURAM.
3. THE KERALA STATE ELECTRICITY
REGULATORY COMMISSION, REPRESENTED BY ITS
SECRETARY, 30, PARAMESWARA BHAVAN,
BELHAVEN GARDENS, KOWDIAR P.O., THIRUVANANTHAPURAM
-695 003.
4. THE ASSISTANT ENGINEER,
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL CIRCLE, EZHUKONE.

S.C. FOR K.S.E.B. SRI. JOSE J. MATHEIKEL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03/01/2007, ALONG WITH W.P.(C) 34562/2006 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) NOS.34525 & 34562 OF 2006

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DATED THIS, THE 3RD DAY OF JANUARY, 2007

J U D G M E N T

These two writ petitions raise common question of law and facts. Petitioners were originally classified under LT IV in respect of their packing units. From 9.4.2003, the respondent Electricity Board included them in Tariff VII A as commercial tariff and demanded electricity charges under LT VIIA . This was the subject matter of challenge before this Court and ultimately, a Division Bench of this Court by Ext.P3 judgment in W.A. 1365/2003 allowed the writ petition and directed the Regulatory Commission to to pass orders on the question as to whether packing units would be treated as falling under LT IV or LT VIIA, as the case may be. Subsequently, the Commissioner has passed Ext.P5 order which is impugned in both these writ petitions.

2. The learned standing counsel appearing for the Board brought to my notice a Division Bench decision of this Court in W.P.(C) 17033/2006 wherein also the question of classification of industry and the applicability

of the tariff came up for consideration pursuant to the decision rendered by the Commission. Following the decision of the apex court in **Binani Zinc Ltd. v. Kerala State Electricity Board and Others (Civil Appeal No. 7453/2004)** it was held that the remedy of the petitioner is to file an appeal before the Tribunal constituted under 110 of the Electricity Act, 2003 and that a writ petition is not maintainable. Petitioner was also directed to file an appeal within a period of one month from the date of the judgment and the Tribunal was directed to entertain the same and dispose of it in accordance with law, on merits. Since there was already an interim order passed by the learned Single Judge, the same was directed to be continued till final orders are passed by the Tribunal. In the light of the above decision of the Division Bench of this Court, it has to be held that the petitioners in these writ petitions have got an effective remedy by way of appeal before the Tribunal under Section 110 of the Electricity Act.

3. In such circumstances, there will be a direction that in case the petitioners prefer appeals within a period of one month, then the appellate authority shall entertain and dispose of the same in accordance with law, after hearing the parties. The demand raised as per Exts.P8 and P9 notices and coercive action if any, pursuant thereto will stand stayed for a period of

WP(C) NOS. 34525 & 34562/06 :3:

one month. Thereafter, the matter will be governed by any orders that may be passed by the appellate authority in any interim application to be filed by the petitioners pending consideration of the appeals.

The writ petitions are disposed of as above.

P.R. RAMAN,
JUDGE.

knc/-